

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**FIRST APPEAL No. 3085 of 2005
To
FIRST APPEAL No. 3100 of 2005**

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

THE HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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**SPECIAL LAND ACQUISITION OFFICER - Appellant
Versus
AMBARAMBHAI MOHANBHAI - Respondent**

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Appearance :

FIRST APPEAL Nos. 3085 to 3092 of 2005

Ms. Krina P.Calla, A.G.P. for the appellants

Mr. A.J.PATEL, for the respondent/claimants

FIRST APPEAL Nos. 3093 to 3100 of 2005

Mr. L.R.Pujari, A.G.P. for the appellants.

Mr. A.J.PATEL, for the respondent/claimants.

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**CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

Date : 27/11/2006

ORAL COMMON JUDGMENT**(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)**

These appeals filed under Section 54 of the Land Acquisition Act, 1894 ["the Act" for short] read with Section 96 of the Code of Civil Procedure, 1908, are directed against common judgment and award dated December 2, 1999, rendered by the learned 2nd Extra Assistant Judge and Special Judge (L.A.R), Ahmedabad (Rural) at Mirzapur, in Land Acquisition Case Nos. 1979 of 1996 to 1994 of 1996, by which the claimants have been awarded additional amount of compensation at the rate of Rs. 13/- per sq.mt. for their acquired lands over and above the compensation offered to them by the Special Land Acquisition Officer at the rate of Rs. 1.20 Ps. per sq.mt. by his award dated February 5, 1996.

2. The Executive Engineer, Narmada Project, Division No.18, Mehsana, proposed to the State Government to acquire the lands of village

Chanothiya, Taluka : Viramgam, District : Ahmedabad for the public purpose of construction of Goraiya Branch Canal under Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that the lands of village Chanothiya were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued, which was published in the Official Gazette on April 26, 1993. Thereafter the owners of the lands were served with notices issued under Section 4(1) of the Act and they opposed the proposed acquisition. After considering their objections, the report under Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On study of the said report, the State Government was satisfied that the lands of village Chanothiya, which were specified in the Notification published under Section 4(1) of the Act were needed for the public purpose of construction of Goraiya Branch Canal under Narmada Project. Therefore, a

declaration under Section 6 of the Act was made, which was published in the Official Gazette on September 20, 1993. The interested persons were thereafter served with the notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.20/- per sq.mt.. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his Award dated February 5, 1996 offered compensation to the claimants at the rate of Rs. 1.20 Ps. per sq.mt. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they filed applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer the matters to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court, Ahmedabad, where they were registered as

Land Acquisition Case Nos.1979 to 1994 of 1996.

3. On behalf of the claimants, witness Ratilal Ishwardas Patel was examined at Exh.80. Apart from stating that the lands acquired were highly fertile and that each claimant was earning net income of Rs.40,000/- per year per Bigha from the sale of agricultural produces, the said witness produced previous award of the Reference Court relating to the lands of adjoining village Aghar @ Ashoknagar in support of the claim for enhanced compensation advanced by the claimants. The witness also mentioned in his evidence before the Court that the lands, which were acquired from village Aghar @ Ashoknagar, were similar, in all respects, to the lands which were acquired in the instant case, and even crop-pattern was also similar. The witness further stated that the boundaries of village Chanothiya and village Aghar @ Ashoknagar were touching each other and that the road, for which the lands of village Aghar @ Ashoknagar were acquired, was only at a distance of 3 to 4 fields from the lands acquired

in the instant case.

In his cross-examination, the witness stated that the distance between village Chanothiya and village Aghar @ Ashoknagar was 1 KM. Except extracting this statement, nothing further could be elicited through his cross-examination.

On behalf of the appellants, witness Dahyabhai Naranbhai Patel, who was then discharging duties as Executive Engineer, was examined at Exh.82. From his testimony, it is evident that he had not participated personally in the instant land acquisition proceedings, nor had seen the lands acquired, but, had deposed before the Court on the basis of record available in the Office. However, it was stated by this witness in his examination-in-chief that the lands acquired were irrigated lands and that mainly crops of juvar, millet, cotton etc. were being grown on the lands acquired.

4. On appreciation of evidence adduced by the

parties, the Reference Court was of the opinion that the previous award of the Reference Court relating to the lands of adjoining village Aghar @ Ashoknagar, was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that for the purpose of acquiring lands from village Aghar @ Ashoknagar, notification issued under Section 4(1) of the Act was published in the Official Gazette on September 29, 1983; whereas in the instant case, notification under section 4(1) of the Act was published in the Official Gazette on April 26, 1993 for acquiring the lands in question, and in view of time-gap, the claimants were entitled to reasonable rise in price of land at the rate of 10% per annum. In the ultimate analysis, the Reference Court has awarded additional amount of compensation to the claimants at the rate of 13/- per sq.mt. i.e. Rs. 14.20 Ps. per sq.mt., in all, , by his judgment and award dated December 2, 1999, giving rise to

the abovenumbered appeals.

5. This Court has heard Ms.Krina P.Calla, learned Assistant Government Pleader for the appellants, and Mr.A.J.Patel, learned counsel for the claimant/s in each appeal. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which contains oral as well as documentary evidence adduced by the parties before the Reference Court.

6. Though it was claimed by witness for the claimants that the lands acquired were highly fertile and that each claimant was earning net income of Rs.40,000/- per year per Bigha from the sale of agricultural produces, the said assertion could not be made good by leading cogent evidence. However, the assertion made by the said witness that the lands acquired were highly fertile stands corroborated by admission made by the witness examined on behalf of the appellants. Witness Dahyabhai Naranbhai Patel, examined by the appellants, has in terms stated

that the lands were irrigated lands and that the claimants were able to raise different crops, such as juvar, millet, cotton etc. on the lands acquired. From the record of the case, it is evident that the enhanced compensation was never claimed by the claimants either on the yield basis, or on the basis of comparable sale-instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of adjoining village Aghar @ Ashoknagar. The said previous award was produced at Exh.49. A perusal of Exh.49 indicates that the lands of village Aghar @ Ashoknagar were acquired for the public purpose of construction of Viramgam - Jaksi - Bhadana - Aghar Road pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on September 29, 1983. Therein, the Special Land Acquisition Officer by his award dated April 30, 1987 had offered compensation to the claimants at the rate of Rs.1/- per sq.mt. Feeling aggrieved, the claimants had sought

references. Accordingly, references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos.1669 of 1987 to 1681 of 1987. Therein, witness Sumanbhai Manilal Patel, examined on behalf of the claimants, had stated in his testimony that the lands acquired were fertile and that the claimants were able to raise three crops in a year. It was further mentioned by the said witness that the main crops raised on the lands acquired were millet, wheat and paddy. Thus, the assertion made by the witness for the claimants that the lands which were acquired from the adjoining village Aghar were similar, in all respects, to the lands acquired in the instant case, and that even the crop-pattern was also similar, could not be demonstrated to be untrue. Similarly, the assertion made by the witness for the claimants that the boundaries of village Chanothiya and village Aghar were touching each other, could not be challenged effectively. It is well settled that the previous award of the

Reference Court in respect of lands of a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of the lands, similar in nature, acquired subsequently from another adjoining village. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the lands of village Aghar @ Ashoknagar for the purpose of determining market value of the lands acquired in the instant case. Exh.49 shows that the lands of village Aghar @ Ashoknagar were acquired for the public purpose of construction of road pursuant to publication of notification issued under Section 4(1) of the Act in the Official Gazette on September 29, 1983; whereas in the instant case, notification under Section 4(1) of the Act was published in the Official Gazette on April 26, 1993 and, therefore, in view of the time-gap of about 9 years and 7 months, this Court is of

the opinion that the Reference Court was justified in giving the benefit of rise in price of lands to the claimants at the rate of 10% per annum. However, it is agreed between the learned Counsels for the parties that the calculation made by the Reference Court about the amount of compensation payable to the claimants is erroneous. The learned Counsels for the parties have agreed that on correct calculation, the claimants in the instant cases, would be entitled to get compensation, in all, at the rate of Rs. 12/- per sq.mt. with all statutory benefits, and not at the rate of Rs.14.20 Ps. per sq.mt. as held by the Reference Court. Apart from the mistake committed by the Reference Court in the calculation, this Court is of the opinion that on appreciation of evidence adduced by the parties, the Reference Court has recorded correct findings of facts, to which settled principles of law have been applied. Therefore, no ground is made out by the learned Counsel for the appellants to restore the award rendered by the Special Land

Acquisition Officer.

For the foregoing reasons, the appeals partly succeed. The judgment and award dated December 2, 1999, rendered by the learned 2nd Extra Assistant Judge and Special Judge (L.A.R.), Ahmedabad (Rural), Mirzapur, in Land Acquisition Case Nos. 1979 of 1996 to 1994 of 1996 awarding compensation to the claimants, in all, at the rate of RS. 14.20 Ps. per sq.mt. is hereby modified and it is held that the claimants would be entitled to get compensation at the rate of Rs. 12/- per sq.mt. in all, with statutory benefits, for their acquired lands. The appeals are allowed to the extent indicated hereinabove only. The other directions contained in the award are not interfered with and are hereby confirmed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

[J.M.PANCHAL.J.]

[SMT.ABHILASHA KUMARI, J.]

(patel)